IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

MARTHA J. SWERINGEN,
Plaintiff in Error,

vs.

THE CITY OF ST. LOUIS,
Defendant in Error.

No. 187.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

STATEMENT AND BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This cause was brought to this court on writ of error to the Supreme Court of the State of Missouri, from a judgment entered in said court, reversing the judgment of the Circuit Court of the City of St. Louis, Missouri, which was in favor of the plaintiff, and entering judgment for the defendant.

The action is one in ejectment, wherein the plaintiff seeks to recover a considerable portion of the north wharf of the City of St. Louis, but on the trial she limited her claim to a narrow strip beginning 60 feet north of Dock street, and extending 90 feet wide between parallel lines from the western line of the wharf eastwardly to the Mississippi River.

The description of the property in the petition is, therefore, entirely misleading in that it includes a great deal more land than that for which plaintiff on the hearing actually contended. From statements of counsel for plaintiff in error, and from the whole record, it appears that the substantial controversy is as follows: The plaintiff in error claims title to property under a patent of the United States granted to Louis Labeaume and his legal representatives, under a Spanish concession, as an heir of William Christy. She claims as riparian owner under a patent of the United States to Louis Labeaume, which patent will be found set forth in full in the printed transcript at page 14 *et seq.* A mere casual glance at the words of description of this patent will show that the tract or parcel of ground covered thereby is most carefully described by metes and bounds, courses, distances and monuments, and that the eastern bounding line is not the Mississippi River itself, but a line carefully laid out and surveyed on the surface of the earth; that is, through a sand beach, a portion of which imposed itself between this eastern boundary line and the Mississippi River.

The petition is in the usual form of a declaration in ejectment.

The answer of the City of St. Louis is, *first,* a general denial; *second,* a plea of title by adverse possession for a period of ten years next before the filing of plaintiff's

petition; *third,* a plea of acquiescence by the plaintiff in the claim and adverse use and occupancy by the defendant, City of St. Louis, of the property in controversy as a public wharf of said city for a period of more than ten years prior to the filing of plaintiff's petition, and that plaintiff was estopped by the said acquiescence in the use and occupancy of said property by the defendant City of St. Louis as a public wharf; and *fourth,* a plea to the effect that neither the plaintiff nor any of her predecessors in the title were seized or possessed of the premises in controversy within ten years before the commencement of the action.

In the trial court a jury was waived and the cause was submitted to the court on the evidence and declarations of law prayed by the respective parties. The court found in favor of plaintiff (plaintiff in error here). After taking the necessary steps for a new trial, the defendant City of St. Louis, appealed to the Supreme Court of the State of Missouri, where, on July 3, 1899, the Supreme Court reversed the judgment of the trial court and entered judgment in favor of defendant, the City of St. Louis, defendant in error here.

As shown by the opinion rendered by the Supreme Court of Missouri, the cause was determined upon certain points referred to in the following excerpt:

After setting out the facts and discussing the question or riparian rights, the court said:

"It is fundamental in the law of accretions that the lands to which they attach must be bounded by the river or stream to entitle its owner to such increase. * * *

"Now, in the patent to Labeaume the river is not mentioned as a boundary. On the contrary the eastern boundary is a permanent line fixed by courses and dis-

tances, metes and monuments 'between high and low water mark,' and the accompanying survey exhibits a tract of fourteen acres, or more, between the eastern boundary of the survey and the river itself. To the east of the pink line which borders the survey of 1852 lies a larger *'sand beach'* which separates the river from the Labeaume survey.

"We are unable to agree with counsel for plaintiff that the plat to the patent carries the north line of the survey by a dotted line across the said beach. On the contrary we think it is plain that this dotted line from the point 'F' marks the then northern limits of the city, and not of this survey. The plats and the language of the survey alike bring us to this conclusion. It follows that the effort to bring this case within the doctrine of *Shelton v. Maupin,* 16 Mo. 126, must fail because there is no evidence that the lines of this survey ever ran to the river.

"Whatever may have been the original Spanish concession, the survey and patent made under the confirmation in 1852 must control as to the extent of Labeaume's right. (Smith v. St. Louis, 21 Mo. 36.)

"A great number of cases decided by this court are cited by the plaintiff to sustain her claim that the call for the eastern boundary constitutes the grantees in the Lebeaume patent riparian owners. *(LeBeau v. Gaven,* 37 Mo. 556; *Perkins v. Adams,* 132 Mo. 131; *Tatum v. St. Louis,* 125 Mo. 647; *Crandall v. Allen,* 118 Mo. 403; *Naylor v. Cox,* 114 Mo. 232; and others.) A very cursory reading will demonstrate that in each of these cases the river itself was a boundary line and no other lands intervened between the river and the riparian claim."

After discussing several authorities, the Court continues as follows:

"The tract in this case was confirmed, not only by fixed boundaries *other than the river,* but the exact number of acres was specified within that survey, and that survey, as to its quantity, excludes all idea that the United States was granting the fourteen or more acres lying outside of that survey at the time it was made.

"The survey, moreover, says that Soulard's survey did not describe the meanders of the Mississippi river or of Rocky branch, and it was impossible to determine whether the difference in area was the result of miscalculation by Soulard or by the accretions; but whatever the cause of the discrepancy, the United States confirmed the last survey, *which nowhere calls for the river as a boundary.* And by that patent all these questions must be held to be forever settled.

"Our conclusion is that as Labeaume was not a riparian owner, his heirs or grantees can not recover the tract in suit as an accretion. The Court therefore erred in admitting the patent as any evidence of title to the land in suit, as it did not purport to convey it to Labeaume."

The Court then takes up the question of adverse possession and acquiescence and estoppel of plaintiff in error herein, and discusses this phase of the case as follows:

"Plaintiff then having no paper title to the land in suit is remitted to an actual, continuous, adverse possession of the tract as her basis for recovery. She has no color of title by which her possession of a part can extend to the whole.

"What evidence, then, is there in the record of such possession as would ripen into a title? By the form of her action she admits the possession of defendant, and the defendant in possession may rest upon that possession until plaintiff exhibits a better title. Plaintiff must recover upon the strength of her own title, and not upon the insufficiency of the defendant's.

"Plaintiff has shown no continuous, if any, possession of the property in suit. There is not a pretense that the same was ever inclosed by a fence or that plaintiff had any buildings or permanent structure of any kind or character on this particular land.

"There is no proof of actual ownership or claim thereof in the record.

"On the contrary, the proof appears quite conclusive that she recognized the city's right to a wharf. The plat which she introduced to show the mutual agreement between Mrs. Tyler, by Silas Bent on one side, and Sallie McPheeters, Mary B. Scott and Julia Crosby, by W. M. McPheeters, shows, among other things, that in 1873 the 90 feet herein sued for was designated on the plat as an extension of lots 33, 34 and 35, and the prolongation brought it to another tract, marked *"Wharf,"* and there it terminated. This tract was marked Mrs. Martha T. Sweringen.

"On the trial, plaintiff's counsel distinctly announced they would be bound by this map or plat. In a word, twenty-two years before the commencement of this action, it appears this land was a part of a public wharf, and none of the persons who had that property surveyed were making any claims to the land in dispute in this action. Another significant fact is this: Kennett, now Hall, street was opened by condemnation proceedings in 1870. This street is east of plaintiff's original lots.

The property east and west of Kennett street which is within the extended side lines of plaintiff's original lots was platted and treated as the property of the Tyler and Buchanan heirs, and Liebke and Schrage were made parties to the proceedings, as lessees of the Buchanan heirs. Damages were assessed in favor of the Tylers and Buchanans. Plaintiff, Mrs. Sweringen, was made a party to that suit, and benefits were assessed against her lots in Block 308 E, to pay the assessment to the Tylers and Buchanans, and they were sold to, and afterwards, in 1879, plaintiff bought her lots from the city.

"Notwithstanding all this property was platted as belonging to others, and that she was served with process, she permitted those proceedings to go without objection. Neither plaintiff nor her agents made the slightest claim of ownership of this tract at that time.

"The tax receipts disclose that since 1874 the plaintiff did not pay on the land sued for. She did return her property *west of the wharf line in Block 254*, but the receipts do not corroborate the oral testimony that she paid on the tract in suit, but most clearly disprove it. Her receipts show that the land on which she paid was bounded on the east by the wharf, and neither the plaintiff or her agents objected to such a description. So much for the negative aspect of her adverse possession."

The Court then discusses the evidence introduced by plaintiff in error herein as to the occasional expulsion of squatters from this property, and plaintiff's tax receipts and failure to pay taxes on the particular property in controversy, and concludes as follows:

"It follows that plaintiff introduced no evidence to show possession or seizin of the tract sued for within ten years before the commencement of her action, and

the Circuit Court erred in not so holding, as plaintiff had no paper title drawing to her the possession."

This opinion of the Supreme Court is found in Vol. 151, Missouri Reports, at Page 348 *et seq.*

It seems clear that the Supreme Court of Missouri decided this cause on three propositions. The first was one of interpretation of the words of description employed in the Labaume patent, and it was held that neither the plaintiff in error here, nor her predecessors in the title, became riparian proprietors under the language of that patent.

Second, the Court held that neither the plaintiff nor her predecessors in the title had been in possession of the property in controversy for ten years or more prior to the bringing of her action; and third, that the City of St. Louis had occupied said property, claiming the title thereto adversely to plaintiff and all others for a period long exceeding ten years next prior to the filing of plaintiff's action, and had occupied the same as a public wharf, and that by the various acts and matters appearing in the record the plaintiff and her predecessors in title had acquiesced in the claim, possession, use and occupation of the property by the City of St. Louis.

STATEMENT OF EVIDENCE.

On either of these propositions the judgment of the Supreme Court of Missouri may well stand. And while perhaps it may be unnecessary for the purposes of this writ of error to go into a more extended statement of the facts than the foregoing, nevertheless, for the con-

venience of the court we submit the following more complete recital thereof:

It is contended by the defendant in error at the outset of the case that the plaintiff's ancestors and grantors were not riparian owners, because the description of the property conveyed by the Labaume patent did not extend the limits of the property to the Mississippi River, but to a line which, beginning at a stake between *high and low water mark,* continued with the meanders of the river *"between high and low water mark"* from the mouth of Rocky branch to the point of beginning; said line being shown by the description as well as by the pink line in the plat attached to the patent, and defining the boundaries of the survey, to be at all points from the furthest limit north to the furthest limit south, several hundred feet west of the waters of the Mississippi. The property of the Labaume patent, issued in 1852, ended at its northeast corner at what had been the mouth of Rocky branch, and the northeast corner of the survey, and the northeast corner of the City of St. Louis. The patent to Rufus Easton, introduced by the defendant in error, had its southern boundary along the meanders of the Rocky branch terminating on the river bank at the mouth of Rocky branch, in 1826, and the description of the Easton survey extended at that time along with the bank of the Mississippi River.

Against the objection and exception of the defendant in error that there was no riparian ownership under the Labaume patent, and that none of the evidence offered by plaintiff in error was competent as having any relation to the property here in controversy, the plaintiff in error was permitted to introduce evidence in the form of deeds, plats and partition proceedings, tending to show that originally, and prior to 1830, the property in

the Labeaume patent, immediately south of Rocky branch, was known as out-lot No. 9; that by the partition proceedings of the property of William Christy's estate, out-lot No. 9 was subdivided into lots, in 1843, of which three lots were conveyed to trustees for the plaintiff, Martha J. Sweringen, those lots being each 30 feet front, making 90 feet in all, by about 138 feet in depth, and that by the death of trustees the title vested in her. This property is located in what has for many years been City Block 308 E, and is now bounded east by First, or Main street. Since 1843, nearly 1,500 feet of land have been added to what was then the bank of the river at City Block 308 E, and about the west line of First street, so that the present line of the river at the east line of the wharf is nearly 1,500 feet eastwardly from the old mouth of Rocky branch, and includes City Blocks 660 W, 660, 660 E, and 2544. Plaintiff in error, by projecting the north and south side lines of her 90-foot strip to what is now the river, claimed all of the property from what was her original western line, in the middle of City Block 308 E, straight through to the present river bank, including all of the wharf within the 90-foot strip, from the western wharf line to the eastern wharf line, or present bank of the river.

By an examination of plat No. 2, which Surveyor Joyce identified as part of his field notes, used in making surveys for the plaintiff in error, among others, it will appear that the mouth of Rocky branch was formerly about 270 feet north of Dock street, at a point a few feet west of First street. With the progress of time, as appears from the same plat, Rocky branch, as it progressed through the land that was formed, extended in a generally easterly direction, until it was south of Dock street, in 1866, by at least 150 feet, at a point

south of City Blocks 660 and 660 E. The line of the Mississippi River in 1866, as it appears on said plat, extended from the then mouth of Rocky branch in a northeasterly direction, until it crossed what is now City Block 2544.

The plaintiff in error has absolutely no form of paper title, and nothing of record by deed, plat or any other form of instrument, tending to show that she claimed title to any property east of City Block 308 E at any time. On the other hand, it appears in evidence for the defendant in error that as early as 1852, and in the same year that the Labeaume patent was issued, under which plaintiff in error claims, George Buchanan, claiming under the Easton patent, north of Rocky branch, made a dedication of streets to public use by a plat duly recorded, Plat Book 3, page 39, in which dedication Second street and First street, as far south as Rocky branch and 206.6 feet south of Buchanan street, appear as dedicated streets.

In the language of his dedication, George Buchanan claims as his property what is colored in red on the plat, and the part colored in red extends as far south as Rocky branch and the north boundary of St. Louis, and it contains the statement that from First street to the Mississippi River is 940 feet.

(It is to be noted that the property in the name of James T. Sweringen, on Buchanan street, between Second street and Broadway, is not the original part of the property in controversy in this suit, which is between First and Second streets, and is more than 320 feet south of Buchanan street.)

It also appears from the evidence of the defendant in error that the heirs of George Buchanan made a voluntary partition, in 1866, from the plat of which partition

and the description of the property in the deeds conforming to said plat, streets and alleys are laid out and dedicated, and lots conforming to such streets and alleys, which lots extend as far south as Rocky branch at its entrance into the Mississippi River, in 1866, at the time the plat was made.

Referring again to Plat No. 2, of Joyce, it will be seen that the plat of the Buchanan partition conforms exactly to the outlines of the Rocky branch and the Mississippi River, as they appear on said Plat No. 2, and a descriptive reference will be found on Plat No. 2, of Joyce, showing that the lines on said plat are taken from the lines on the plat of the Buchanan partition in Deed Book 308, page 524.

On said Plat No. 2, of Joyce, City Block 2544 appears in full as being bounded on the east by the western line of the wharf, and south by Dock street. It also appears from said Plat No. 2 that the stone at the corner of Dock street and the wharf was set there by Moulton, engineer for the city.

Referring to the same Plat No. 2, it appears that the 90-foot strip, between the projected side lines of the Sweringen lots in City Block 308 E, runs across Rocky branch at a point in City Block 660, and across property set out in the Buchanan partition under the names Sallie McPheeters, George Buchanan, M. B. Scott. It is also to be observed that if lines had been projected from the Buchanan or Easton property at or prior to 1843, along the northern limit of the city, as it then extended eastwardly from the mouth of Rocky branch, such projected side lines would entirely cover the claim of Mrs. Sweringen, east of Kennett street, extending to the river. That is to say, whether the claim for accretions had been made to conform to the lines of Rocky

branch, which was the method adopted by the Buchanan heirs, or had followed the line dividing the city from the county, viz., the easterly line defining the city's northern limit from the point which was the northeastern terminal point for both surveys, the effect upon the accretion is the same, viz., it cuts off the extension of the Sweringen strip of 90 feet at about the same point in City Block 660.

Notwithstanding the claim by George Buchanan to all the accretion as far south as Rocky branch and the city limits, made in 1852, in the most public manner possible, by a plat of dedication; notwithstanding the public partition and platting by the Buchanan heirs in 1866 of the same property, with its extensions eastward and southeastward; all of which appears in plaintiff's evidence (see Plat No. 2 of Joyce); and notwithstanding the possession by Liebke (as appears in defendant's testimony) from 1857 to 1866 under a recorded lease from the Buchanan Estate, "to the southern boundary of said George Buchanan's Estate, including the entire landing or river front;" the plaintiff in error did not offer a scintilla of evidence to show any public claim by her, by deed, plat, or other record, or by suit against any Buchanan, or any tenant of a Buchanan.

In order to show possession of the property in controversy, Mr. J. V. S. Barrett, grandson of plaintiff, took the stand. Plat No. 1 was shown to witness. This is the plat which Mr. Joyce testified was prepared by him from Plat No. 2, and on which the side lines were extended from the western wharf line to the river, at the request of plaintiff's counsel, just before the trial. Witness was shown this plat, and, having had pointed out to him the property east of the wharf line, he said he went, in 1868 or '69, when about eight years old, with

his Grandfather Sweringen and Capt. Bent, *"to this very identical property,"* to have it surveyed. *No survey was produced by plaintiff,* but as all the testimony, including the later statements of Mr. Barrett, shows that "this very identical property" was in the river at that time, this statement must be considered erroneous.

Witness testified to the death of plaintiff's husband in 1872; that plaintiff had a house on Lot 308 E, fronting Second street. On cross-examination, Mr. Barrett testified that he never heard of a claim by Liebke to possession of part of the land under a lease made by the Buchanans, and never heard of any deed by which plaintiff's title to any of the property within the green lines on Plat No. 2 was affected, nor of any disturbance of her title or possession. Notwithstanding Mr. Barrett's ignorance, thus shown, of the Buchanan plats and the Liebke lease, and possession with logs, and notwithstanding his ignorance of the proceedings for the opening of Kennett street, the Marshal's sale to the city of plaintiff's lots in Block 308 E, to pay damages to other persons for the taking of property east of Block 308 E, and the plaintiff's redemption of the same property (as shown by defendant's evidence), the witness claimed to have knowledge enough to say that his grandmother, the plaintiff in error, paid taxes on the property down to the Mississippi River. As the plaintiff offered in evidence no tax receipts after 1869, and as the tax receipts from 1875 to 1895 (which the plaintiff in error declined to offer in evidence, or to produce for inspection, until compelled thereto by order of Court) disclose the fact that no taxes were ever paid by plaintiff in error on any property east of City Block 2544, *i. e.,* on the ground in controversy, Mr. Barrett's statement that taxes were paid to the river must be referred to the memory of his

boyhood, and must be taken in a strictly Pickwickian sense.

Chas. T. Farrar testified that he had charge of the property of plaintiff in error, from Second street to the river, since October, 1875, and paid the taxes. On several occasions he put squatters off, that is, people who put shanties or shanty boats on the property. On cross-examination, witness testified that he never heard of any claim to any part of the land from Block 308 E to the river till the railroad built its tracks. Witness transacted all plaintiff's business. His uncle and he always paid taxes and attended to street opening matters. Witness did not recollect the opening of Kennett street, but thought plaintiff in error had something to do with it. He remembered that she had a lot of property sold out before he took charge of it, and he bought from Huntington Smith a lot of bills to redeem property. He had no memory about those bills now without examining his books. Questioned specifically as to whether he had ever removed any squatters from the land east of Block 2544, witness said he had removed approximately a half a dozen; that he had removed them since he knew that the railroad company and Mr. Joy were in possession; that he did not recall any other squatters he had removed from that part. Witness testified, as a real estate expert, to value of 75c. per square foot monthly rental, $116.92.

John G. Joyce testified that he had surveyed the ground marked on Plat 2 at the request of attorneys for plaintiff in error, and according to the instructions of the attorneys at the time, and the property pointed out by them for such survey was bounded east by the wharf,

as indicated on the Plat No. 2. He said the green lines on Plat No. 1 had been extended down to the river, at the request of counsel for plaintiff in error, three or four days before the trial. He further testified in detail to the condition of the river in 1866, and subsequently to the building of the dykes, to their effect in filling up the land inside of them, and to the various details of measurements and surveys set out on Plat No. 2.

John H. Terry testified, as a real estate expert on values, that the property in controversy was worth 80c. per square foot, making a total for 346 feet by 90 feet of $24,922.00, an annual rental of $1,495.32, a monthly rental of $124.60.

On cross-examination, witness testified that he had known of no sales on the river front since the railroad stopped buying five years ago.

Against the objection of defendant in error, the plaintiff in error was permitted to introduce the tax bills from 1851 to 1870, inclusive. From these it appeared that plaintiff in error paid taxes to the State and city separately up to 1867, and together from 1867 to 1870. Nearly all these tax bills described the street on which the property fronts as First street, Front street, or Main street. The eastern boundary is stated to be the "river" on eight different bills, ending in 1858. It is given as "Front street" once; as "First street" six times; as "E & N limits" twice; "Self" five times; "Second street" once; and a blank appears for the eastern boundary seven times. The measurement is given as "90 ft. front" uniformly. The depth is usually stated at 138 feet, but varies from 75 feet to 224+ feet.

But it is a significant fact that the original measurement in depth of the lots as laid out in the Sheriff's sale in the Christy partition, under which plaintiff in error

claims, is 138 ft. to the western end of the lots; and that the other lots extending back to Second street, laid out under the same Sheriff's sale, were 140 feet deep, making a total from Second street to the river of 278 feet. (See Plat C.) Referring to Joyce's Plat 2, it appears that this total of 278 feet is the measurement from Second street to the line of the Mississippi River at the time of the Sheriff's sale. Said Plat 2 of Joyce also shows that the depth of the Sweringen strip of 90 feet from the western line of said strip to First street, now Main street, is 224 feet 4 inches, the greatest depth contained in any tax bill offered in evidence by plaintiff in error. *That is to say, the evidence for plaintiff in error discloses that the plaintiff in error never paid taxes, up to 1870, on a foot of ground east of Main street.*

At the close of plaintiff's evidence, defendant offered an instruction for a non-suit, which was refused.

DEFENDANT'S EVIDENCE.

Defendant in error showed first the title under the Easton patent, north of Rocky branch, which became the Buchanan title already referred to, and the plat of "George Buchanan's Division. Bremen." Under the Buchanan title, Capt. Liebke had possession for nine years and five months under a recorded lease from the executor of George Buchanan of "all the land east of Second street and extending from Second street to the river, and from Angelrodt street on the north to the southern boundary of said George Buchanan's estate, including the entire landing or river front of said George Buchanan's land, excepting the streets and alleys which are or may hereafter be laid out through said

premises, all of said land being in what is known as George Buchanan's Addition to the town of Bremen."

And after the expiration of the lease and the Buchanan partition, Capt. Liebke had possession of substantially the same property under separate leases from the individual heirs.

Capt. James M. Montgomery, an old steamboat pilot, testified that Rocky branch was the center of an old bend in the river, the landing of steamboats and rafts.

He also testified to the building of the dykes and to the resulting formation of land within them.

Capt. John H. McBride, another steamboat pilot, testified substantially to the same effect as Capt. Montgomery.

Capt. Herman Rechtien testified that the longitudinal dyke was started in 1864, by the city, under a contract with Sheehan, and the witness had charge of the towing in of barges.

Julius Moulton, engineer in the Harbor and Wharf Department, testified to his survey in 1883-84 of the west line of the wharf as established by Ordinance 5403, and placing corner stones and monuments to mark it, notably the stone at the northwest corner of Dock street and the wharf, being the southeast corner of City Block 2544, identified by Joyce and described at length on his Plat No. 2, and also the stone at the intersection of the western wharf line and Buchanan street to which Capt. Liebke testified, viz., "a square stone marked 'city,' eight inches square and put there by the city establishing the west corner of the wharf and Buchanan street."

Mr. Moulton also described the property leased to Justin E. Joy, in 1891, as part of the *"unimproved wharf,"* at a rental of $600 per annum for five years, $1,200 per annum for the second five years, and $1,800

per annum for the third five years. The property contained 152,000 square feet, and covered the property in controversy, which, according to the testimony of Judge Terry, contained 31,140 square feet.

Defendant offered in evidence Ordinance 5403, approved August 6, 1864, entitled, "An Ordinance to establish and open the wharf from Biddle street to the northern boundary of the city, and from Hazle street to the southern boundary of the city."

This ordinance defined the line passing the property in question as the western line of the wharf, identified by Joyce and Moulton, and shown on the various plats in evidence.

Defendant in error also introduced the proceedings for opening Kennett street in 1870. In the petition, as it was served and published, the plaintiff in error is named four times as a defendant. Damages to the amount of $2,000 are assessed in favor of plaintiff in error and two others, for the taking of property on Warren street, several blocks south, and benefits amounting to $560 are assessed against plaintiff in error and the same co-tenants, for the same property. (Assessment No. 133.)

The plat required by law to be filed with the proceedings shows the 90-foot strip in Block 308 E, west of First street to be in the name of plaintiff in error, Martha J. Sweringen (coinciding with her tax bills previous to 1870); but shows the property east of First street to be all assessed in the names of others than the plaintiff, viz., Mary L. Tyler, Julia Crosby, Sallie B. McPheeters, Ben. W. Lewis and Mary B. Scott.

The verdict of the jury confirms the finding of damages for the opening through the property east of the 90-foot Sweringen strip in favor of Mary L. Tyler, to the

amount of $1,500, and assesses benefits against the lot of plaintiff in error in Block 308 E, to the amount of $27 for benefits, and 27 cents for costs.

The judgment of the Land Commissioner is in accordance with the verdict of the jury.

The plaintiff's property was sold by the City Marshal, at public auction, and the city itself became the purchaser for $45.24. This was October 16, 1871.

On March 24, 1879, the plaintiff redeemed the property by paying $70.85, the amount of the claim and costs, and received a deed from the city reciting all of the facts.

The lease from the city to Justin E. Joy was read in evidence, showing the terms of Joy's tenancy since 1891.

Ernest Boedicker, from the Assessor's office, identified the plat books of City Block 2544, and testified that the block came into existence in 1874, and that no property east of that block had ever been assessed for taxes.

The plat books showed the same thing; as did also the tax receipts of plaintiff, from 1875 to 1895, offered by defendant for that purpose.

In rebuttal, Dr. W. M. McPheeters being called to identify the agreement of 1873, between Mrs. Tyler and part of the Buchanans, testified that he did not represent all of the Buchanan heirs, and the Court having admitted the agreement in the case of plaintiff in error, now ruled it out. Mr. Farrar identified the tax bills from 1875 to 1895, and testified to the presence of a house in Block 308 E.

The defendant in error at this point asked for a peremptory instruction that the plaintiff in error could not recover, which was refused.

The plaintiff in error asked a number of instructions which were given, and which will be found in the printed transcript.

In addition to the above, it appears from exhibits forming a part of the brief and argument of defendant in error, in support of its motion to dismiss or affirm (page 26, *et seq.*), that the plaintiff in error, BEFORE SHE SUED OUT THE WRIT OF ERROR TO THIS COURT, sold and conveyed all her interest in the property in controversy, and that her grantees immediately brought a new action in ejectment against the City of St. Louis and Justin E. Joy, a lessee of a portion of the property from the City of St. Louis, in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, claiming the same property now here in controversy, and that the City of St. Louis set up therein the same defense that it had theretofore set up in this action, and in addition thereto, a plea was filed to the jurisdiction of the United States Circuit Court.

It further appears that said action was tried before His Honor, Judge Elmer B. Adams, a jury having been waived, and that while the United States Circuit Court held that under the Lebeaume patent plaintiff and her ancestors were riparian owners, that nevertheless the City of St. Louis had occupied said property for public uses, in which the plaintiffs in that case, or those under whom they claimed, had acquiesced, and that they were therefore estopped from claiming the property, and judgment on the merits of the controversy was entered in favor of the defendant, the City of St. Louis.

It thus appears that two courts before whom the rights of the City of St. Louis, defendant in error herein, were investigated, decided in favor of the City of St.

Louis, and neither of them based its decision upon any Federal question, but upon the general rules of law respecting titles to real estate.

On the merits of this cause, if this Court should undertake, upon the record as presented, to go into the merits, the following brief and argument are submitted:

BRIEF.

I.

The Labeaume patent, under which plaintiff in error claims title, does not make the Mississippi River the boundary of the grant; therefore, the property therein embraced was not riparian, and its owner was not entitled to the accretions made by the river.

Niles v. Cedar Point Club, 175 U. S. 300.
Sweringen v. St. Louis, 151 Mo. 348.
Hafner v. St. Louis, 161 Mo. 34.
Smith v. Public Schools, 21 Mo. 36.
Cook v. McClure, 58 N. Y. 437.
Dunlap v. Stetson, 4 Mason 349.
Child v. Starr, 4 Hill (N. Y.), 369.
Bradford v. Cressey, 45 Me. 9.
Daniels v. Cheshire R. R. Co., 20 N. H. 85.
Healey v. McCormick, 3 Kernan 296.

II.

Plaintiff in error's theory is that she is entitled to such accretions as lie between the side lines of her original lots prolonged or extended to the river.

Even if those lots had been in fact bounded by the river, such is not the rule of law.

Crandall *v.* Allen, 118 Mo. 403, and Ca. Ci.
Deerfield *v.* Armes, 17 Pick. 41.
Kehr *v.* Snyder, 114 Ills. 313.

III.

But even a prolongation of the side lines of land of plaintiff in error would not avail her; such prolongation of the lines would be intercepted and cut off by a prolongation of the side lines of the Buchanan land, covered by the Easton patent, which lay north and east of her's, and nearer the river.

On the views of the law taken by plaintiff in error, therefore, relating to accretions, the newly formed land became attached to and a part of the Buchanan property.

IV.

Even on the assumption that plaintiff in error was a riparian owner, and that she was entitled to accretions between extended side lines, she has shown no continuous seisin or possession of any property east of her original lots, so as to connect the same by continuous accretions with the property in controversy, and establish a basis for recovery.

V.

Plaintiff in error is barred by the Statute of Limitations.

a. **There was no evidence that she, or any person, under whom she claims, was ever in possession of any part of the premises in controversy; certainly not at any time within ten years preceding the institution of this suit.**

b. **On the other hand, there was evidence that Buchanan's lessees and assigns have been in possession since 1857.**

c. **As early as 1866 the Buchanan heirs laid out and platted a subdivision of their property, assigning lots to different heirs, and laying out certain streets, which lots and streets extended south to Dock street, and across and east of the side lines of the original lots of plaintiff in error, if prolonged to the river.**

VI.

Upon the trial, plaintiff in error, by her counsel, *agreed to be bound* by the plat offered by her, in connection with the testimony of the witness Robert E. Collins.

This plat bounds the land of plaintiff in error on the east by the WHARF.

Wash v. Mo. Pac. Rwy. Co., 102 Mo. 582 (588).
Renshaw v. Ins. Co., 103 Mo. 595 (603).
Finkelnburg's App. Prac. 106.

VII.

The city having expended large sums of money for building dykes and revetments in order to construct a great public wharf under Ordinance 5403, providing a complete wharf system for the entire river front of the city; having granted a license to the railroad company to use a part of the unimproved wharf thus formed; having leased a part to defendant Joy; and the railroad company having also expended large amounts for the connection of its great railway system; and plaintiff in error, having stood by for years in silence, and having permitted these public improvements to be made, is estopped from maintaining ejectment against either the city or the railway company.

Dodd v. Railroad Co., 108 Mo. 581.
Provolt v. Railroad Co., 57 Mo. 256.
Masterson v. Railroad Co., 72 Mo. 633.
Kanaga v. Railroad Co., 81 Mo. 126.
McClellan v. Railroad Co., 103 Mo. 295.
Railroad Co. v. Town Site Co., 103 Mo. 466.
Avery v. Railroad Co., 113 Mo. 561.
Webster v. Railroad Co., 116 Mo. 117.
Scarrett v. Railroad Co., 127 Mo. 298.
City of St. Joseph v. Landis, 54 M. A. 326.
Planet Property & Fin. Co. v. Railway, 115 Mo. 613.
House v. Montgomery, 19 M. A. 170.
Gibson v. St. L. A. & M. Ass'n, 33 M. A. 165.
School Dist. v. Lindsay, 47 M. A. 134.

VIII.

Several streets intervened between the lots of plaintiff in error and the river, thereby effectually preventing accretions from attaching themselves to these lots.

Smith v. Public Schools, 21 Mo. 36.
Smith v. Public Schools, 30 Mo. 290.
St. Louis v. Lemp, 93 Mo. 437.
Ellenger v. Railroad, 112 Mo. 526.
Tatum v. St. Louis, 125 Mo. 657.
St. Louis v. Mo. Pac. Ry. Co., 114 Mo. 13.

IX.

The defendant in error having created the land in controversy for the express purposes of a wharf, and having held open, notorious, continuous, adverse and peaceable possession for more then ten years next before the bringing of this action, title is in defendant in error, the City of St. Louis.

Mather v. Walsh, 107 Mo. 121.
White v. Keller, 114 Mo. 479.
Wilkerson v. Eilers, 114 Mo. 245.
Sherwood v. Baker, 105 Mo. 472.
Long v. K. C. Stock Yards Co., 107 Mo. 304.
Allen v. Mansfield, 82 Mo. 693.

X.

Even if the title to the property in question were not in the defendant in error, the City of St. Louis, and had

originally been in the plaintiff in error, the defendant in error has acquired an easement in the property used as a wharf by the public for more than ten years, with the acquiescence of the plaintiff in error, and she is estopped from claiming title or possession in this action.

Adverse use of land by the public for ten years will bar a recovery.

Price v. Town of Breckenridge, 92 Mo. 378 (1887).
State v. Walters, 69 Mo. 463.
State v. Young, 27 Mo. 260.

XI

Plaintiff's conduct, as disclosed by the record, estops her from denying a dedication of the land in controversy for wharf purposes. The city having undertaken to improve it as such; having demised part of it as an unimproved portion of the wharf, under its charter power; having granted the St. Louis, Keokuk & Northwestern Railway Co. a right of way over it; and the evidence showing also that steamboats landed there, an acceptance was established, and the dedication became complete.

Elliott's Roads and Streets, p. 91.
McKee v. St. Louis, 17 Mo. 184.
Rector v. Hart, 8 Mo. 488.
Stacey v. Miller, 14 Mo. 478.
Gamble v. St. Louis, 12 Mo. 617.

ARGUMENT.

I.

THE LABEAUME PATENT, UNDER WHICH PLAINTIFF IN ERROR CLAIMS TITLE, DOES NOT MAKE THE MISSISSIPPI RIVER THE BOUNDARY OF THE GRANT; THEREFORE THE PROPERTY THEREIN EMBRACED WAS NOT RIPARIAN, AND THE OWNER WAS NOT ENTITLED TO THE ACCRETIONS MADE BY THE RIVER.

The rule is universal that land must be bounded by the river or stream in order to entitle it to accretions. If the boundary be not the river, and the space between the boundary and the river be ever so small, the accretions made belong to that space and the owner thereof. In the patent in question, the river is nowhere made the boundary. The boundary is a line by *metes and monuments and courses and distances "between high and low water-mark,"* and the survey incorporated in the patent shows that a large amount of land had been formed in front of that line. The lines of the grant were *not* carried to the new shore, and thence down the same with its meanders, *but they stop between the old shore and the new.* If the boundary excludes the river, the grant does not carry the accretions.

The Supreme Court of Missouri, in the case at bar, after considering the Lebeaume patent, under which

plaintiff in error claims, held that that patent did not convey to the river, saying at page 358:

"The tract in this case was confirmed not only by fixed boundaries, other than the river, but the exact number of acres was specified within that survey, and that survey, as to its quantity, excludes all idea that the United States was granting the fourteen or more acres lying outside that survey at the time it was made."

Sweringen v. St. Louis, 151 Mo. 348.

The Labeaume patent was again before the Supreme Court of Missouri for construction, and the Sweringen case, in 151 Mo., was followed and approved, and the Court again held that the property conveyed by that patent was not riparian property, but that the eastern boundary was a line west of the river.

Hafner v. St. Louis, 161 Mo. 34.

The case of Niles v. Cedar Point Club, 175 U. S. 300, is conclusive against the claim of plaintiff in error that the property conveyed by the Labeaume patent conveyed to the river.

Where one corner was a stone, etc., on the west bank, *"thence running on the western bank of said river to high-water mark to first bound,"* it was held that the river was not the boundary.

Dunlap v. Stetson, 4 Mason 349.

So a line running to G river, thence *"along the shore of said river to, etc.,"* it was held that the river was not the boundary.

Child v. Starr, 4 Hill (N. Y.) 369.

So a line running on the *"west bank of said creek,"* it was held that the creek was not the boundary.

Bradford v. Cressey, 45 Me. 9.

The doctrine as to the *"bank"* or *"shore"* excluding the stream is fully sustained in

Daniels v. Cheshire R. R. Co., 20 N. H. 85.
Healey v. McCormick, 3 Kernan 296.

Where the boundary line of land bordering on a pond was expressed in the deed "to commence at a stake near the high-water mark of the pond, and to run thence along the high-water mark of said pond to the upper end of the pond," it was held that the boundary line was fixed and permanent, and that the grantee was not entitled to any accretions or land left dry by the pond receding.

Cook v. McClure, 58 N. Y. 437.

The confirmee of a Spanish grant is confined to the boundaries established by the survey, although the original concession was bounded by the river.

Smith v. Public Schools, 21 Mo. 36.

Now, bearing in mind the foregoing rules of law, let us apply them to the facts of this case.

The description of the patent opens as follows:

"Begin at a stake set on the right bank of the Mississippi River, *between high and low water-mark,* and on

the extension line produced eastwardly from Labeaume's southern ditch, the lower and most eastern corner of the survey, and the upper and most northern corner of the survey of Joseph Brazeau, No. 3332." The description then continues at great length, and in minute details according to surveyor's measurements, describing the large tract of 374 arpents, until, in the course of the description, it comes back to "a point at the mouth of the Rocky branch, the northeastern corner of this survey, and a corner to the City of St. Louis, it being the northern termination of the northwestern boundary line thereof." This corner being a point at the mouth of Rocky branch, is described in the patent as being marked F on the plat of Milburn, Surveyor, attached to the patent. The patent then continues the description as follows: "From the corner F down the right bank of the Mississippi River *with the meanders thereof between high and low-water mark:* south nine degrees east; at eight chains sixty-six links a stake. Thence south twenty degrees east; at five chains fifty links, a point from which offset north seventy degrees east, one chain eighty-three links *to the center of the water of the Rocky branch as running through the sand beach*—six chains sixty-three links to the bluff of the sand beach—seven chains forty-seven links to the water's edge of the Mississippi River;—*return to the meandering line*—at ten chains a post from which the southeast corner of a stable bears south forty-two degrees west, distant forty-six links to the upper point of the entrance of the water of the Rocky branch into the Mississippi River, bears south sixty-two degrees thirty minutes east distant sixteen chains. Thence south thirty-four degrees east; at seven chains five links, the eastern extension of Labaume's northern ditch, from which the corner marked

D on the plat bears north seventy-four degrees thirty minutes east, distant nineteen chains seventy-five links; at twenty-five chains a stake. Thence south twenty-three degrees east; at thirteen chains sixty-seven links, the northeast corner of Robertson & Patterson's sawmill; at fourteen chains eight links, the southeast corner of said mill; at twenty chains fifty-seven links, the southeast corner of Hendrick's flour mill, nineteen links to the right; at twenty-three chains thirty-five links, the northeast corner of Cohrane's sawmill. Thirty chains ninety-five links to *the beginning corner.*"

It is respectfully submitted to the Court that the description of the survey as contained in the petition, and especially that part quoted above, establishes the line of property conveyed by the patent clearly and unequivocally on a line between high and low water-mark, which is indicated upon the plat by the clear black line extending from the letter F southwardly to A, and which is to the left of the irregular light lines marked sand beach, and between the sand beach and the little dotted marks indicating the high bank. In short, the property included in the patent, as shown by the plat, which is a part of the original patent, is within the limits of that which is marked in pink ink, and includes no part of the sand beach at all, but shows that the property conveyed by the patent in 1851 and 1852 was nearly a thousand feet from the then water's edge of the Mississippi River. The granting clause of the patent is as follows: "Now know ye, that there is, therefore, granted by the United States unto the said Louis Labeaume, or to his legal representatives, or to his or their heirs, the tract of land, as described in the aforesaid survey No. 3333, saving and reserving any valid adverse rights, which may exist

to any part thereof." The straight dotted line which runs from the point F on the plat out into the river is the east and west line marking the northern limits of the city at that time, as can be seen by reference to any of the other plats, and is not the northern line of the survey, as was contended for below by plaintiff's counsel; the fact being that the property here in controversy is north of the old city limits existing at the time of the survey. That this is not part of the property surveyed is shown by the fact that it is a dotted line, and is not in any way within the black boundary lines and the pink coloring which clearly denote what are intended as the boundaries of the survey. If there were any doubt about this, it would be entirely cleared up by the language of the survey where it refers to the corner marked F as "a corner to the City of St. Louis, it being the northern termination of the northwestern boundary line thereof." A reference to the plat shows that the long dotted line extending across the entire survey diagonally, and ending at point F, is marked "northwestern boundary line of the City of St. Louis." As stated before, a reference to any plat in evidence showing these boundary lines will show that the line from F extending into the river is the east and west line marking the northern limits of the city as the accretions formed to the east of the point F.

The eastern boundary line of the survey as shown on the plat, as the Court will see by reference to the plat and also by the description in the survey, was many hundred feet from the water's edge of the Mississippi River at the time the survey was made in 1851 and 1852. The distance is a varying quantity, but in one place it is shown to be nearly 1,000 feet. This is where the surveyor says "return to the meandering line," at which

point he fixes a post, from which the upper point of the entrance of the water of the Rocky branch into the Mississippi River (*i. e.*, where the Rocky branch entered the Mississippi in 1851 and 1852, after running across the sand beach in a southeasterly direction) bears south sixty-two degrees thirty minutes east, distant sixteen chains. That is, the distance in a diagonal line from the post mentioned to the then entrance of the mouth of Rocky branch was 1,056 feet, and the distance in a direct line, therefore, must have been nearly 1,000 feet.

A careful inspection of the plat and a careful reading of the survey in the very patent upon which plaintiff's whole title depends discloses, therefore, that the patent itself conveyed to the original patentee, under whom alone plaintiff claims, property which did not come within one thousand feet of the edge of the Mississippi River. In short, neither plaintiff nor her grantors were ever riparian owners. So, it is reiterated that upon that ground alone plaintiff in error has failed to show a cause of action in not showing title to accretions as riparian owners, upon which accretions necessarily and solely a claim is based for the property in controversy in this suit.

II.

IN THE DIVISION OF ACCRETIONS NO REGARD IS PAID TO THE DIRECTION OF THE SIDE LINES BETWEEN CONTIGUOUS PROPRIETORS.

The evidence shows that the land sued for is accretion, made by the filling up of a considerable bend in the river.

The land claimed lies between the prolongation of the side lines of the land claimed by plaintiff in error on the original shore.

This is *not* the rule for the division of accretions between the several owners on the old shore. That rule is that each person on the old shore is entitled to a proportionate frontage on the new shore, measured by the frontage of the old and new shores, and that no attention is to be paid to the original side lines between the several proprietors.

Gould on Waters, Sec. 162.
Crandall v. Allen, 118 Mo., 403 and cases cited.
Deerfield v. Armes, 17 Pick. 41.
Kehr v. Snyder, 114 Ill. 313.

In the case of *Crandall* v. *Allen, Supra,* this Court quoted with approval the language of the Supreme Court of Illinois, used in *Kehr v. Snyder,* 114 Ill., 313, as follows: "One common principle which pervades all mode of division (of accretion or alluvion) is that no regard is to be paid to the direction of the side lines between contiguous proprietors."

III.

PLAINTIFF IN ERROR IS NOT ENTITLED TO THE LAND IN CONTROVERSY, EVEN ON HER OWN ERRONEOUS THEORY OF A PROLONGATION OF THE SIDE LINES, BECAUSE SUCH LINES WOULD BE INTERCEPTED AND CUT OFF BEFORE REACHING SAID LAND, BY A PROLONGATION OF THE SIDE LINES OF THE EASTON OR BUCHANAN PROPERTY.

As the Labeaume patent touched Rocky branch on the south, so the Easton patent touched Rocky branch on

the north. Both followed the meanders of the branch, and were bounded by a point in the mouth of Rocky branch. The Easton patent was issued on the first of May, 1826. A copy thereof was introduced in evidence in this case. This patent contains a description from which it appears that the line of the property conveyed extended "to the Rocky branch, thence meandering down the branch east six chains, north thirteen chains, north fifty-three degrees forty-five minutes, east eight chains and fifty links, to a post at the mouth of the branch, thence up the Mississippi River." As already shown in the argument upon the former point, and by reference to the plat attached to the Labeaume patent, Rocky branch, from the original mouth at the time this post was established and the point fixed, extended in a southeasterly direction down and across the sand beach formed by accretions to the land, so that, even if the grantor of plaintiff in error had been a riparian owner (which he was not), the accretions which formed north of Rocky branch, *and therefore in front of the Easton property, afterwards known as the Buchanan tract,* extended with the meanders of Rocky branch in a southeasterly direction in such a way *as to intercept and cut off any extension between the side lines of the property of plaintiff in error.* The title to the accretions then must have accrued, so far as the position of the land and its relation to Rocky branch was concerned, to the Buchanan heirs, and not to that of plaintiff in error or her grantors.

IV.

EVEN ASSUMING THAT PLAINTIFF IN ERROR HAD A RIPARIAN OWNERSHIP IN THE ORIGINAL LOTS IN BLOCK 308 E. (WHICH SHE HAD NOT), AND ASSUMING THAT SHE HAD THE RIGHT TO ACCRETIONS BETWEEN THE EXTENDED SIDE LINES OF HER PROPERTY (WHICH SHE HAD NOT), SHE HAS SHOWN NO CONTINUOUS SEISIN OR POSSESSION OF ANY PROPERTY EAST OF SAID ORIGINAL LOTS, SO AS TO CONNECT THE ORIGINAL LOTS BY CONTINUOUS ACCRETION WITH THE PROPERTY IN CONTROVERSY AND ESTABLISH A BASIS FOR RECOVERY IN THIS ACTION.

The property in controversy being accretion, plaintiff in error must show continuous seisin and possession of every foot of the land as it was formed.

This is, in some respects, a peculiar case. Plaintiff in error is trying to take away from the defendant in error, by the process of a writ of ejectment, property which is some 1500 feet from any property to which plaintiff in error has any claim of paper title. In view of this fact, the Court will scrutinize with unusual care all testimony offered by plaintiff in error as a basis for her recovery, in order to ascertain whether there is *any* evidence to support her claim. It may be fairly said that few, if any, of the cases cited by plaintiff in error have any application whatever to the case at bar. Nearly all the cases in ejectment have reference to property clearly defined by survey, and described by metes and bounds, or courses and distances, and the questions which arise are the common propositions, incidental to disputes between neighboring owners with reference to the respective boundary lines, or to the

question of possession; nor are the propositions involved in this case such as they would be if the owner of a farm on the Missouri River or the Mississippi River should be contending for property which had become attached to his original domain by the ordinary process of accretion. It is respectfully submitted that it is only by showing a continuous seisin and possession of the accretion property as it forms, as well as showing the right in law to such accretion as formed upon the original property of plaintiff in error, that she can recover in this action. This she has not done.

The evidence shows:

1. That the Buchanan family, through Andrew Buchanan, acquired title to the land under the Easton patent as early as 1839, and by inheritance and mesne conveyances it came into the possesion of George Buchanan and his heirs; as early as 1857 the executors of George Buchanan's estate made a lease to Christian Liebke and his partners, Schrage & Letzig, of all the land east of Second street and to the river from Angelrodt street on the north to the southern boundary of the Buchanan property. This southern boundary was at or below Dock street, and the property lay from that point north and north-east of Rocky branch, and extended entirely across any property which would be covered by the side lines of the lots of plaintiff in error in 308 E., and extended to the river, so that the Buchanan property cut off all claim, if there had been any, to the accretions formed upon lots of plaintiff in error in City Block 308 E. The testimony of Capt. Liebke on the stand shows that pursuant to the lease of July 4th, 1857, which was duly recorded, a copy of which was offered

in evidence in this case, he took possession of all of that property, and continued in possession of it as the tenant of the Buchanan estate until the partition of the Buchanan estate, in 1866, and the laying out of the subdivision, which is known as Buchanan's Addition (a plat of which is in evidence). After said partition, Capt. Liebke continued to be the tenant of the several holders of the property under the partition, and, amongst others, of Sallie B. McPheeters, whose property extended entirely across the property included between plaintiff's extended side lines. He was also the tenant of the heirs, and in general showed by his testimony that he was in possession of the entire tract, or the greater part of it, from 1857 down to a very recent date, and during all that time was using the property for the purposes of his business, in connection with his saw mill, at Second and Buchanan streets; that the whole tract was covered many months in the year with logs, hauled out of the river by him for use in his saw mill, and that he used it in every way essential to the proper carrying forward of his business.

2. That in 1866 the Buchanan heirs laid out their subdivision, assigning lots to different heirs, and laying out streets, which lots and streets extended southwardly to Dock street, and across and east of the side lines of plaintiff's original lots in Block 308 E., and extended eastwardly toward the river. These proceedings were open, public, notorious. The plat was duly filed and remained on record from 1866 to the present time. Upon it appear the various divisions of lots assigned to the different heirs, and platted in their respective names. Between them, at stated intervals, were streets and alleys. The most casual observer of this plat can see,

without the use of instruments to mark the lines, that the extended side lines of the property of plaintiff in error in City Block 308 E. would run directly through the Buchanan property. Yet, from 1866 to the present time, the plaintiff in error has brought no proceedings against the Buchanan heirs to establish her claim to the accretions which are within the limits of their claim. Nor is the agreement and plat between Mrs. Tyler and Dr. McPheeters offered in evidence, an agreement which aids the plaintiff in error. It was contended by the defendant in error at the trial, and is contended now, that that agreement and plat were not competent evidence for any purpose. It was not pretended that all of the Buchanan heirs were in any sense parties to it. The paper showed on its face that they were not all parties. The evidence of Dr. McPheeters showed the same thing, and his evidence further discloses that so far as he endeavored to act for those whose names he signed he was without authority in the premises. We contended then, and still contend, that that paper should have been excluded, because it is not competent evidence in this case. To obviate the adverse claim of the Buchanans, no agreement short of an agreement with all of them could have any effect, even if the plaintiff in error had been a party to it. In the present instance, the plaintiff in error was not a party to the pretended agreement offered in evidence. It stands, then, uncontradicted that from 1866 to the present time the Buchanan property has stood upon plats and official records of the City of St. Louis between the property of plaintiff in error in City Block 308 E. and the river. *But suppose the McPheeters agreement and plat be admitted,* WHAT DID THAT PLAT SHOW? That in 1873 the persons who were attempting to plat the property, and to show what

property they severally claimed, did not claim a foot of property east of the wharf line, and that the plaintiff in error herself made no claim to any of the property in controversy in this case. The lines as marked down on that plat of property in the name of the several persons there noted, extended only to the WHARF, so that, if the plaintiff in error is permitted to use that plat for any purpose as tending to support her claim to any property east of Block 308 E., she proves herself out of Court in showing that in 1873, 22 years before she brought this proceeding, she was not claiming any of the property for which she now sues in this action.

3. Kennett street (now Hall street) was opened by the City in 1870, east of the original lots of plaintiff in error; the property east and west of Kennett street, which is within the extended side lines of plaintiff's original lots, was platted and treated as the property of the Tyler and Buchanan heirs; and Liebke and Schrage were named in the writ issued in the opening proceedings as lessees of the Buchanan heirs; damages were assessed in favor of the Tylers and Buchanans; plaintiff in error was a party to the proceedings; benefits were assessed against her original lots in Block 308 E, to help pay damages to the Tylers and Buchanans; her lots were sold for failure to pay such benefits, and in 1879, she having then been a widow for seven years, redeemed the original lots from the City. Here is the plaintiff in error claiming to be the owner of accretions through fifteen hundred feet which have been forming for fifty years, and she now seeks to oust the City of St. Louis from its public wharf, claiming to have been in actual possession of every foot of these accretions at all times; she was made a party to the proceedings to open

Kennett street, in which all of the property east of her original lots, and which she now claims as her own, was platted as the property of other people than herself; she was served with process; she permitted the proceedings to go through without objection; benefits were assessed against her, and seven years after she had become a widow, she paid the money, and redeemed the property which had been sold because of her failure to pay the benefits at the time they were assessed. But her counsel argues that she was a woman, and now an old lady, not understanding about business affairs. Where, then, were these astute agents who were able to testify concerning the property and the squatters, and who knew exactly how far the property extended on which taxes had been paid for twenty years, but who did not know that this property had been sold to pay the benefits for the opening of Kennett street?

4. The tax bills show that plaintiff in error paid taxes in lots on City blocks, bounded by streets, *i. e.*, by Hall street and the streets in Buchanan subdivision, and finally by the wharf, and that she did not pay taxes on the accretions foot by foot as they formed, but recognized the streets. The tax bills, therefore, are no evidence of continuous accretion to property. It seems hardly necessary to amplify this proposition. This statement includes all that need be said upon it. An examination of the tax bills will show the statement to be correct. How, then, can it be argued that the payment of the tax bills recognizing the intervening streets as they do is an evidence of continuous seisin and possession of the accretions as they formed? *And especially so, when the tax bills show that plaintiff in error never paid taxes for property east of First street till* 1875, *al-*

though the property extended 940 *feet east of First street as early as 1852.* (See plat "George Buchanan Division. Bremen."

5. Plaintiff in error has shown no seisin or possession of the property in controversy, *i. e.*, the land east of City Block 2544, constituting the wharf.

a. Plaintiff in error has paid no taxes on it.
See tax bills in evidence.

b. If the general statements of witnesses Barrett and Farrar, to the effect that taxes were paid to the river, could be considered as having any weight, when contradicted by the tax bills themselves, the payment of taxes would not be sufficient to create title, or show adverse possession.

Chapman v. Templeton, 53 Mo., 463, 1873.
Cashman v. Cashman, 123 Mo., 647, 1894.

The only testimony whatever that can be strained into evidence tending to show any possession of the wharf property, is to be found in the loose statements made by the witnesses Barrett and Farrar concerning the payment of taxes and the expulsion of squatters; and Farrar testified that he never put squatters off the property in suit till after he knew that Joy and the railroad were in possession. *This leaves the case with absolutely no specific testimony of possession of the strip east of the wharf line.* No witness identified the property in controversy in any way. As against that stands all of the evidence in the case, including all of the plats except Plat 1, which, according to the testimony of wit-

ness Joyce, was prepared by him at the request of counsel for plaintiff in error three or four days before the trial of this case in the Circuit Court, *drawing down the green lines from the wharf line to the river.* At the same time his own testimony, from what he called his field notes, and from which field notes he said the partial plat, Exhibit 1, was made, shows that the plaintiff in error herself, when, through agents, she had the property surveyed, only had the property surveyed *to the wharf line,* and that she claimed no part of the property on the wharf.

V.

THE ACTION OF PLAINTIFF IN ERROR IS BARRED BY THE STATUTE OF LIMITATIONS.

Plaintiff in error was not seized or possessed of any part of the land in controversy within ten years before the commencement of this action.

"No action for the recovery of any lands, tenements or hereditaments, or for the recovery of the possession thereof, shall be commenced, had or maintained by any person, whether citizen, denizen, alien, resident or non-resident of this State, unless it appears that the plaintiff, his ancestor, predecessor, grantor or other person under whom he claims, was seized or possessed of the premises in question within ten years before the commencement of such action."

Sec. 6764, R. S. 1889.

2. "In the action of ejectment it is essential to plaintiff's case that he show such a right as is necessary to a

recovery under our law. *A defendant in possession may rest upon that alone until the plaintiff exhibits a better title.*"

Duncan v. Able, 99 Mo. 188 (1889).

Plaintiff in error must recover on the strength of her own title, and not the weakness of title of defendant in error.

Marvin v. Elliot, 99 Mo. 616 (1889).
Mather v. Walsh, 107 Mo. 121 (1891).
Wilkerson v. Eilers, 114 Mo. 245 (1892).
West v. Bretelle, 115 Mo. 653 (1893).
Harwood v. Tracy, 118 Mo. 631 (1893).

3. There was outstanding adverse title in third persons, *i. e.*, the "Easton" title, later known as the "Buchanan" title, to the property north of Rocky branch and east of the original lots of plaintiff in error in Block 308 E; so that the prolongation of the side lines of her lots extended into said "Buchanan" property, and she held no title to any property north and east of Rocky branch.

a. The rule of the common law that the defendant in ejectment may show an outstanding title in a third person to defeat the suit, is not changed by statute in Missouri, but is the law of that State.

Guno v. Janis, 6 Mo. 330.
Norcum v. D'Oench, 17 Mo. 98.
Dunlap v. Henry, 76 Mo. 106.

VI.

THE CONCESSION AND AGREEMENT OF PLAINTIFF IN ERROR TO BE BOUND BY THE PLAT OFFERED IN CONNECTION WITH COLLINS' TESTIMONY, DEFEAT HER RIGHT OF RECOVERY.

During the trial, plaintiff in error offered in evidence the plat which *bounds the lots of plaintiff in error on the east by* A WHARF. Attorneys for plaintiff in error announced that she and they would be *bound by that plat.* This concession so made in Court, was of as much force and effect as any admission or agreement which plaintiff in error could, in any way, have made or entered into, and is as conclusive against her as if she and the defendant in error had, prior to the beginning of any litigation, entered into an arrangement with each other, for the purpose of avoiding controversy, that her eastern boundary should be the City's wharf.

Wash v. Mo. Pac. Ry. Co., 102 Mo. 582 (588).
Renshaw v. Ins. Co., 103 Mo. 595 (603).
Finkelnburg's App. Prac. 106.

VII.

THE CITY OF ST. LOUIS, HAVING EXPENDED LARGE SUMS OF MONEY FOR BUILDING DYKES AND REVETMENTS IN ORDER TO CONSTRUCT A GREAT PUBLIC WHARF UNDER ORDINANCE 5403, AS SHOWN BY THE RECORD, PROVIDING A COMPLETE WHARF SYSTEM FOR THE ENTIRE RIVER FRONT OF THE CITY,

AND HAVING GRANTED A LICENSE OR FRANCHISE TO USE A PART OF THE UNIMPROVED WHARF THUS FORMED TO THE RAILWAY COMPANY, AND HAVING LEASED A PART TO DEFENDANT JOY, AND THE RAILWAY COMPANY HAVING ALSO EXPENDED LARGE SUMS OF MONEY FOR THE CONNECTION OF ITS GREAT RAILWAY SYSTEM; AND THE PLAINTIFF IN ERROR HAVING STOOD BY FOR YEARS, IN SILENCE, AND PERMITTED THESE IMPROVEMENTS FOR THE PUBLIC BENEFIT TO BE MADE, IS ESTOPPED FROM BRINGING EJECTMENT AGAINST EITHER THE RAILROAD COMPANY OR THE CITY, AND CANNOT RECOVER IN THIS ACTION.

Provolt v. Railroad Co., 57 Mo. 256.
Masterson v. Railroad Co., 72 Mo. 633.
Kanaga v. Railroad Co., 76 Mo. 207.
Gray v. Railroad Co., 81 Mo. 126.
McClellan v. Railroad Co., 103 Mo. 295.
Railroad Co. v. Town Site Co., 103 Mo. 466-7-8.
Dodd v. Railroad Co., 108 Mo. 581.
Avery v. Railroad Co., 113 Mo. 561.
Webster v. Railroad Co., 116 Mo. 117.
Scarrett v. Railroad Co., 127 Mo. 298.
City of St. Joseph v. Landis, 54 Mo. App. 326.
Planet Prop. and Fin. Co. v. Railway, 115 Mo. 613.
House v. Montgomery, 19 M. A. 170.
Gibson v. St. L. A. & M. Assn., 33 Mo. A. 165.
School Dist. v. Lindsay, 47 M. A. 134.

It is not necessary to amplify this point, either by a discussion of the facts or by references to the cases in detail. The proposition seems clear. The cases speak for themselves.

VIII.

STREETS HAVING INTERVENED IN THE PROPERTY AS FORMED BY ACCRETION, THE PLAINTIFF IN ERROR IS NOT ENTITLED TO ALLUVION BEYOND THOSE STREETS.

This is a proposition which has been well settled in Missouri since 1875. It comes under the old rule of the side line law concerning alluvion. As stated by Judge Napton, in Smith v. Public School, 30 Mo. 290 (1886), at page 300, the rule is as follows: "The plain and simple principle upon which the right of alluvion is placed in the civil law is that he who bears the incidental burdens of an acquisition is entitled to its incidental advantages; consequently that the proprietor of a field bounded by a river, being exposed to the danger of loss from its floods, is entitled to the increment which, from the same cause, may be gradually annexed to it. This rule, however, did not apply to fields which the Romans termed limited, or *agri limitati. 'In agris limitatis jus alluvionis locum non habere constat.'*"

In that case it was held that land bounded by a street was not entitled to alluvion on the other side of the street. This proposition has been repeatedly sustained in this State since that time.

St. Louis v. Mo. Pac. Ry. Co., 114 Mo. 13 (1892).
Smith v. St. Louis, 21 Mo. 36 (1855).
Smith v. Schools, 30 Mo. 290 (1860).
St. Louis v. Lemp, 93 Mo. 437 (1877).
Eilenger v. Railroad, 112 Mo. 526 (1892).
Tatum v. St. Louis, 125 Mo. 657.

"Old decisions, and all those we have seen in this State on the subject, declare our law to be, that where a city lot is separated from the river by a street, owned in fee by the public (or in trust for the public * * *), the proprietor of the lot is not entitled to the alluvion formed upon the street opposite the lot. This proposition must now be considered as settled."

By Barclay, J., in City of St. Louis v. Mo. Pac. Ry. Co., 114 Mo. 13 (1892).

IX.

THE DEFENDANT IN ERROR HAVING CREATED THE LAND IN CONTROVERSY EXPRESSLY TO BUILD A WHARF, AND HAVING HELD OPEN, NOTORIOUS, CONTINUOUS, ADVERSE AND PEACEABLE POSSESSION THEREOF FOR MORE THAN TEN YEARS NEXT BEFORE THE BRINGING OF THIS ACTION, TITLE IS IN THE DEFENDANT IN ERROR, THE CITY OF ST. LOUIS.

1. "A claim of title to land, with actual, adverse possession thereof (of the requisite character), during the period prescribed by the statute, will vest the possessor with title without any paper support thereto whatever. This is no longer a debatable question, and calls for no more than this brief statement."

By Barclay, J., in Mather v. Walsh, 107 Mo. 121 (1891).
White v. Keller, 114 Mo. 479 (1892).

And this is so whether plaintiff knew the facts or not.

Wilkerson v. Eilers, 114 Mo. 245 (1892).

"Actual, continued, visible, notorious and hostile possession is tantamount to a claim of ownership."

By Burgess, J., in Wilkerson v. Eilers, 114 Mo. 245 (254).

And though "defendant took possession of a tract of land that he had no shadow of title to, was a wrong-doer, a trespasser when he entered into the possession, still he may become the absolute owner by thus occupying for the statutory period."

Wilkerson v. Eilers, 114 Mo. 245 (253).

No "color of title" is necessary.

Mather v. Walsh, 107 Mo. 121 (1891).

2. "When real estate is held adversely, the statute operates upon the title, and, when the bar is complete, the title of the original owner is defeated."

By Macfarlane, J., in Sherwood v. Baker, 105 Mo. 472 (1891).
Long v. K. C. Stock Yards Co., 107 Mo. 304 (1891).
Allen v. Mansfield, 82 Mo. 693 (1884).

In 1864, the City of St. Louis passed Ordinance 5403, declaring: "The wharf is hereby established as a public highway for wharf purposes, from the south side of Biddle street to the northern boundary of the City of St. Louis; and from the south side of Hazle street to the southern boundary of the City of St. Louis." The Ordinance then proceeds to describe the wharf line, and in-

cludes in that description the line which constitutes the eastern line of City Block 2544, as described in plaintiff's petition, and, therefore, the western line of the ninety feet which plaintiff is claiming in this action. In pursuance of the purpose set forth in that Ordinance, the City made its dykes and revetments, in order to cause the formation of the wharf to the wharf line along what is now the edge of the river; these dykes and revetments were placed in the river at great expense to the City, and when that wharf had been thus formed, the City placed its monuments at the several corners of the streets, including the corner of Buchanan street and the wharf, and the corner of Dock street and the wharf; those stone monuments were plainly visible; they were placed there by Engineer Moulton, of the City Harbor and Wharf Department, about 1884; witness Joyce, testifying for the plaintiff in error, on cross-examination stated that he knew where the monuments were; his plat No. 2, which he called his field notes, showed the stone at the corner of Dock street and the wharf, and the one at Buchanan street and the wharf was plainly described on his plat No. 2 (field notes). The line between the stone on Dock street and the stone on Buchanan street was described by him as the west line of the wharf, and his plat or field notes showed the wharf plainly marked, and his testimony *showed that Mrs. Sweringen,* through her agents, had had the property she claimed surveyed at the request of her agents, who according to witness Joyce, *instructed him to survey her property to the line of the wharf.* The monuments were familiar to Capt. Liebke, and it was testified by him that they were plainly visible. The wharf, though unimproved, was used, as the testimony showed, for the landing of steamboats, and particularly for the landing of

rafts, and there was testimony of Capt. Liebke that near by, on one of the revetments, were posts, placed there with the permission of the City, for the purpose of enabling boats or rafts to make fast to the wharf. Had this been private property, and had the defendant placed a fence along the line of the property, no one would have questioned for a moment but that that was a taking possession open, notorious, and adverse. It is not the usage or practice of cities to fence in their wharfs. They mark the lines of the wharf by monuments, and that was done by the defendant in error in this case. True, the City did not improve its wharf in the sense of laying a stone levee there, or other work of that kind, but this is not necessary. The City has large quantities of what is known as unimproved wharf, which is recognized in the City Charter (Art. III, Sec. 26, Par. 4), and which the City is permitted to lease under certain conditions. In the case at bar, the City had leased to Joy, as early as 1891, a large part of the unimproved wharf, on or near the ninety feet claimed by plaintiff in error, and all the property leased to Joy is contained within the large description in the petition of plaintiff in error. In short, the City has done with this property everything that is necessary to do with an unimproved wharf, and it has treated this property as a wharf for more than ten years, and plaintiff in error, by her acts, has plainly recognized the existence of this wharf, and the City's claim to the property in controversy as a wharf.

X.

EVEN IF THE TITLE TO THE PROPERTY IN QUESTION WERE NOT IN THE DEFENDANT IN ERROR, THE CITY OF ST. LOUIS, AND HAD ORIGINALLY BEEN IN THE PLAINTIFF IN ERROR,

THE DEFENDANT HAS ACQUIRED AN EASEMENT IN THE PROPERTY USED AS A WHARF BY THE PUBLIC FOR MORE THAN TEN YEARS, WITH THE ACQUIESCENCE OF THE PLAINTIFF IN ERROR, AND PLAINTIFF IN ERROR IS ESTOPPED FROM CLAIMING TITLE OR POSSESSION IN THIS ACTION.

Adverse use of land by the public for ten years will bar a recovery.

Price v. Town of Breckenridge, 92 Mo. 378 (1887).
State v. Walters, 69 Mo. 463 (1879).
State v. Young, 27 Mo. 260.

XI.

SO FAR AS THE PLAINTIFF IN ERROR IS CONCERNED, SHE HAS DEDICATED THE STRIP IN QUESTION TO PUBLIC USE AS A WHARF. SHE HAS MADE A COMMON LAW DEDICATION OF THE SAME, AND IT HAVING BEEN ACCEPTED BY THE CITY, THE LATTER HAVING GRANTED THE RAILROAD COMPANY A RIGHT OF WAY OVER IT, AND LEASED IT AS A PART OF THE UNIMPROVED WHARF, THE DEDICATION IS COMPLETE.

The owner of land may, without deed or writing, dedicate it to public use.

Elliott's Roads and Streets, p. 91 *et seq.*
McKee v. St. Louis, 17 Mo. 184.

No particular form is necessary.

Rector v. Hartt, 8 Mo. 448.

Dedication may be shown by proof of intention of the owner to make it.

Stacey v. Miller, 14 Mo. 478.
Gamble v. St. Louis, 12 Mo. 617.

Existence of a grant is not necessary to a dedication.

Rutherford v. Taylor, 38 Mo. 315.

Whenever the intention is manifest, the dedication is made so far as the owner is concerned, and if accepted by the public, the dedication is complete.

Pierce v. Chamberlain, 82 Mo. 618.

Acceptance is in time if made before the offer to dedicate is withdrawn.

Price v. Town of Breckenridge, 92 Mo. 278.

Among the acts which were held to amount to a dedication, was the fact that the owner did not return the land for taxation.

Skrainka v. Allen, 2 Mo. Ap. 387.

The Statute, Sec. 7531, R. S. 1889, Sec. 6685 R. S. 1879, requires the owner to make return under oath of *all* his real estate. The presumption of the law is that, in the absence of a showing to the contrary, the owner has obeyed the law, that he has made "a list of all the real estate and the value thereof" owned by him and returned the same under oath. This must be the presumption in this case.

So that the proof is that ever since the strip sued for became land, that is to say, ever since 1874, the plaintiff in error made returns of her real estate, and never in a single year did she claim to own the strip in question. Not only this, but she did make returns of the strip west of the wharf line in Block 2544, for in each year she was assessed on it and paid the taxes. And the receipts for the taxes for every year show that the strip in Block 2544 was described as being on the "wharf" and its boundary on the east to be the "wharf," and the presumption is that she returned the land for taxation in that way.

So, for nearly twenty years she never claimed the land as the law required her to do. When called on to return *all* her real estate for taxation to meet the burdens of State and municipality, she made no claim to the strip in question, nor did any one else. It was only after she found that a railroad company had placed its tracks on it as public property, and that the city was deriving some income from it as part of the unimproved wharf, that she asserted a claim to it.

During all the years that she is called on to make and return a list of all her lands in the city, she does so, and by omitting the strip in question she says that it is not hers. She pays year after year taxes on the strip in Block 2544, and sees that it is bounded east by the "wharf," and she never says nay.

In a case of this kind all the presumptions are against the person now asserting title.

She will be presumed to intend the consequences of her own acts and be bound by them accordingly. The principle of common law dedication is founded on the

doctrine of equitable estoppel. The Supreme Court of the United States (Cincinnati v. White, 6 Peters 431, and Morgan v. Railroad Company, 96 U. S. 716) says that "the law considers it in the nature of an estoppel in pais."

"The public, as well as individuals, have a right to rely on the conduct of the owner as indicative of his intent. If the acts are such as would fairly and reasonably lead an ordinarily prudent man to infer an intent to dedicate, and they are so received and acted upon by the public, the owner cannot, after acceptance by the public recall the appropriation."

Elliott's Roads and Streets, page 92, *et seq.*

"The party is estopped on grounds of public policy and good faith from repudiating his own representations."

Greenleaf Evidence, Sec. 207.
Noyes v. Ward, 19 Conn. 250.

The above principles have been enunciated and applied by the Courts in Missouri in numerous cases of implied dedication, some of which are cited above. And we beg the Court's attention to the case of Skrainka v. Allen, 2 Mo. Ap. 387, as being peculiarly in point.

In this case the defendant had filed a plat of an addition to the City, dedicating the streets shown thereon so far as they were on his land. Subsequently he acquired that part of the land shown on the plat which belonged to others when the plat was filed. Thereafter he re-

turned for taxation only the land included in the blocks, but none of the land included in the streets shown on the plat. It was claimed that this fact operated to make a common law dedication of the street. The Court of Appeals said:

"Looking, then, to what Mr. Allen did in respect of his property after May 8, 1871, we find that he has not only *not claimed,* but has positively *disclaimed,* ownership over any part of Arrow street since 1871. At the lowest this evidence tends to the conclusion that Mr. Allen intended and desired to be understood, not only by possible purchasers of lots in his addition, *but by the State, City and County,* that Arrow street was relinquished to the public as a highway after his acquisition of the triangular piece of land *a b c,* which enabled him to give effect to the intention previously declared."

The present case is to all purposes the same in its facts. For twenty years Mrs. Sweringen, the plaintiff in error, not only did not claim this strip lying in the wharf, but she has, during the same period positively disclaimed ownership of it. For twenty years she did not claim the strip, and thereby evaded paying taxes on it, which fact in the Skrainka case, *that is, the wish to escape taxation,* was referred to by the Court as one of the reasons why the property owner in that instance found it advantageous to have the street "not regarded as private property."

After, for more than twenty years, returning the strip in Block 2544 as being on the "wharf," and bounded on the east by the "wharf;" after, for more than twenty years, paying taxes on the said strip in Block

2544 and receiving receipts in which the same is described as being on the "wharf" and bounded east by the "wharf;" after, for more than twenty years, she has thus escaped the payment of taxes on the wharf strip by disclaiming ownership of the same and thus evaded the burdens of the State and city revenue; after the city authorities have, acting on this disclaimer, included the strip on the city plats as part of the public wharf, in the Assessor's Books, in the plat accompanying the opening of Hall street, which plat was introduced in evidence, and to which proceeding Mrs. Sweringen, plaintiff in error, was a party, and on the plat which their own witness Joyce produced as having been taken from the city plats; after all this, she now comes forward and says that she owns this strip, and asks the Court to disregard all of her acts during twenty years, disclaiming ownership and recognizing it as part of the public wharf, and to give it to her.

If ever there was a case in which a person should be held estopped by acts inconsistent with her present claim, this case presents one. It has all the elements which constrained the Court of Appeals to hold in the Skrainka case, that the street had been dedicated to public use, and this Court ought to say that a person, after disclaiming to the public, for more than twenty years, ownership of property, and thereby escape the payment of taxes and other public burdens thereon, is estopped. If the plaintiff in error can thus act, and not be estopped, it means that the great and just principle, that men are to be bound by their acts and conduct, has no force.

The endeavor of the plaintiff in error, by the loose testimony of Farrar and Barrett, to impress the Court

that she had paid taxes on this strip of wharf property in suit all the time, and the difficulty defendant in error met with in compelling the production of the tax receipts since 1870, and in the introduction of the Assessor's plat books, show that the plaintiff in error realized the importance of these facts and the effect they would have on the case.

As the case stands under the evidence the Court must assume that Mrs. Sweringen, plaintiff in error, did for all these twenty and more years return all her real estate for taxation, and never returned the strip in question as belonging to her. The evidence from the tax receipts does show that for all these years she did return a strip 90 feet wide in Block 2544, and that this was described as being on the "wharf," and bounded east by the "wharf." The Court must presume this, because it is a presumption of law.

"It is a presumption of law *that every one has conformed to the law,* and the burden of proof is on him who alleges the contrary."

19 Am. & Eng. Enc. of Law, p. 42, and cases cited.

For the reasons stated we submit that the judgment of the Supreme Court of Missouri should be affirmed.

Respectfully,

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